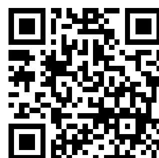




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HINDU LAW

ON

MARRIAGE,

BY

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ON RE-MARRIAGE OF HINDU WOMEN.

Result of researches.

I. Many of us do not clearly understand the rules of marriage ordained by the Hindu Law, nor the privileges and liabilities of a married life. No apology is therefore needed for committing to paper the result of an enquiry and research made to find out correct facts regarding them.

Marriage is optional.

Unmarried are superior.

II. It is generally believed that it is incumbent upon every Hindu to enter into a married life; but this belief is not founded upon the ordinations of the Hindu Law. According to this law, marriage is optional. The Hindu religion indeed holds the unmarried, in greater reverence than the married—*Vide* Verse 18, Chapter 6, Skunda 2 of Sri Bhagavat:—

अमृतंक्षेममभयंत्रिमूर्ध्नोधायिमूर्धसु ।

पादास्त्रयोबहिश्चासन्नप्रजानांयआश्रमाः॥

अंतस्त्रिलोक्यास्त्वपरोगृहमेधोबृहद्व्रतः ।

Sridhara in his Commentary on this says, "others than the married go to eternal worlds while the married go to worlds perishable."

नैष्ठिकब्रह्मचारिवानप्रस्थयतयस्तेषामाश्रमाः

त्रिलोक्याबहिरासन्गृहमेधस्त्वंतः यस्मादबृहद्व्रतः॥

Principles of construction.

III. To some this may look strange and opposed to many texts ordaining a married life. For the information of such it is necessary here to explain the general principles of construction of the religious and legal texts. These principles themselves are mentioned in the Vedas and Shastras. They are, that

any ordination to do an act which one would do from natural desires, is no positive direction to do that act, and that no omission to do that act is penal and punishable. Such ordinations should therefore be construed as prescribing the minimized use of that act when one is *disposed* to do it at large. In the category of such acts the Hindu Law and religion include the acts of eating, drinking and having sexual intercourse; for says Menu, Verse 56, Chapter V :—

नमांसभक्षणेदोषोनमद्येनचमैथुने ।

प्रवृत्तिरेषाभूतानांनिवृत्तिस्तुमहाफला ॥

" In eating flesh, in drinking liquors and in having sexual intercourse, there is no turpitude; for, to such enjoyments all are naturally prone: but abstinence from them produces a signal compensation."

Sri Bhagavat, Verse 11, Chapter 5, Skunda Eleven says :—

लोकेव्यवायामिषमद्यसेवानित्यास्तुजंतोर्नहितत्रचोदना ।

व्यवस्थितिस्तेषुविवाहयज्ञसुराग्रहैरासुनिवृत्तिरिष्टा ॥

"There *is* eating, drinking and carnality in the world. To secure them, there needs be no imperative direction. Their use is minimized by prescribing Sacrifices and Marriage; abstinence from them however is pleasing to the Vedas."

With reference to the aforesaid rule of construction, no texts ordaining marriage make it penal not to marry, but should be construed to apply to such as are disposed to marry and not to such as do not desire to be married.

IV. To such of the Dwijas, *viz.*, Vipras, Chettrias, and Veishyas, as are desirous of sacred knowledge (*vide* Apastamba I, 1, 1, 8) Oopanayanam is prescribed as imperative, as it is

Oopanayanam.

a ceremony which enables one to commence one's sacred, and other education. When the education is completed, a person is allowed the fullest choice to determine whether he would continue a Brahmacharry for life, or enter a married life, or become an anchorite or Sanyasee. This appears to be one of those points on which there is no difference of opinion among the learned Hindus. Authorities in its support will not therefore be copied here but briefly referred to;

No Brahmacharry need necessarily marry.

	Chap.	Verse.	Page of Dharmashastra Sangraha.
Menu	2	243, 244, 249	...
Vishnu	28	...	113
Laghuharit	3	...	182
Yagna Valkya	1	49, 50	414
Ausanasa	3	...	517
Samvart	...	34	587
Vyasa	1	...	324
Datcha	1	...	383
Gautama	3	...	406
Vasishta	7	...	470

Vishnupurana Book III, Chapter 10, Verses 13, 14, Page 298.
Sri Bhagavat Skunda 7, Chapter 12, Verse 14.
Do. Skunda 11, Chapter 17, Verses 30 and 37.
Markandayapurana Chapter 28, Verses 15 and 16.
Agnipurana Chapter 153, Verse 17.

V. It is often said that marriage is Oopanayanam for females and that as such the law makes this ceremony imperative in their case, and that females are not intended by law and religion to be allowed an option in the matter. Such, however, is not the case. Our reli[illegible] records show of woman living a life of celebacy.

Refutation of the statement that marriage being Oopanayanam to women, they must be married.

The 63rd verse of the first chapter of the 4th Skunda of Sri Bhagavat runs as follows:—

तेभ्योदधारिकन्येद्वेवयुनांधारिणींस्वधा।
उभेतेब्रह्मवादिन्यौज्ञानविज्ञानपारगे॥

Sridhara explains this thus, तयोस्तु संततिर्नाभवत् जीवन्मुक्तत्वात्. that is, the two ladies herein mentioned were "emancipated while living."

Perpetual virgins.

Veraragava Charry says—

सनकादिवदूर्ध्वरेतस्केतेइतिभावः॥ that they were "perpetual virgins."

Girls cannot be married without their consent.

VI. The rules and ordinations about marriage show that women cannot be married unless they wish and consent to enter a married life:

*Menu says in Verse 4, Chapter 2, "Here no action is necessary for any body who has no desires."

Vasishta says, Chapter 17, Page 489; †

"Parents commit sin if they fail to give away in marriage their सकामा daughter, &c., &c., that is, a daughter who is desirous of sexual intercourse."

In Colebrook's Digest of Hindu Law, Vol. 2, Page 113, this text is translated thus:—"As often as a virgin's

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* अकामस्यक्रियाकाचित्दृश्यतेनेहकर्हिचित्

† यावच्चकन्यामृतवःस्पृशंतितुल्यैःसकामामभियाच्यमानां।
भ्रूणानितावंतिहतानिताभ्यां मातापितृभ्यामितिधर्मवादः॥

courses recur, who *desires* and *demands* marriage with a man of equal class, so many beings are destroyed."

In Sri Bhagavat, 3rd Skunda, 21st Chapter, Verse 27, a marriageable damsel is described as मृगयंतींपतिं that is, "looking for a husband." Again in Verse 9, Chapter 22 of the same Skunda, she is said to be अन्विच्छतिपतिंयुक्तं that is "desirous of being united with a husband." These clearly show that the girl should be *desirous* to be married.

Catyayana is said to have ruled, "A woman may neither be given nor accepted against her own consent; this is a settled rule of the law."

VII. From the authorities quoted in paras 5 and 6, it is clear that it is optional with males and females to marry or not.

They must be of ages of discretion.

VIII. It being so, it necessarily and logically follows that the bridegroom and bride must be at the time of their marriage of ages of discretion. Let us see what are the ages of discretion and what are those below which males and females could not be married.

Majority.

IX. All know that a male attains his majority when he is 15 years old, and a female when she attains her puberty, or is declared by the Hindu Law to be Rajaswala, that is, from her 11th year: * say Parasara and others that a girl eight years old is called a Gowry, nine years old a Rohinee, ten years old a Kannya, and when older a Rajaswala.

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* अष्टवर्षाभवेद्गौरी नववर्षातुरोहिणी॥
दशवर्षाभवेत्कन्या अतऊर्ध्वंरजस्वला॥

*Datcha rules, Chapter 1, Page 383, that a male is minor until he is fifteen years old.

Marriageable ages.

X. Taking then these ages as the periods of discretion, does the law prescribe or sanction any earlier period as fit for their marriage?

XI. The only sort of marriage now in vogue is *Brahma*, which is defined in law to be "The gift of a daughter clothed only with a single robe, (to an educated man) to a man learned in the Vedas, whom her father voluntarily invites and respectfully receives, is the nuptial rite called Brahma." (*Vide* Verse 27, Chap. 3, Menu.)†

XII. According to the authorities quoted below the marriageable age of a virgin commences from her 11th year; and, the age up to which a damsel is at the disposal of her relatives to be given away in marriage, is three years after she attains puberty; from this period the girl herself may choose a proper husband for her.

‡(1.) Menu, Chapter 3, Verse 5—says,

"She who is not sapinda by mother and sagótra by father, and *who has had no sexual intercourse*, is fit to be married."

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* अप्राप्तव्यवहारोसौ यावत् षोडशवार्षिकः

† आच्छाद्य चार्चयित्वाच श्रुतिशीलवतेस्वयं।
आहूयदानंकन्याया ब्राह्मो धर्मः प्रकीर्तितः॥

‡ असपिंडाच यामातुरसगोत्राचयापितुः।
साप्रशस्ताद्विजातीनां दारकर्मण्य मैथुनी॥

(2.) In Manu, Chapter 9, Verse 4 काले दाता पिता वाच्यो वाच्यश्चानुपयन् पतिः "*Kalay*" is interpreted by Callooka as ऋतोः प्राक् that is, before puberty.

(3.) *Again in Verse 88, Chapter 9, Menu lays down that "To an excellent and handsome youth of the same class a girl who may not have attained age may be married with all ceremonies of marriage.

(4.) In Verse 94 of the same chapter, he says, that a man aged 30 years may marry a girl of twelve, or a man of 24 years, a damsel of 8, if necessary.

(5.) In Verse 5, Chapter 10, the same author says—
"In all classes they and they only, who are born in direct order, of wives equal in class and *virgins* at the time of marriage, are to be considered as the same in class."

(6.) † In Vishnupurana, Book 3, Chapter 10, Verse 16, it is laid down—" One thrice as old *should* marry a wife of ⅓ of his age."

(7.) In Brahat Parasara, Chapter 4, Page 120, he calls a marriageable girl, "of puberty" प्रस्वेदसुभगां

(8.) ‡ Parasara in Chapter 7, Page 24, says—

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* उत्कृष्टायाभिरूपाय वरायसदृशायच।
अप्राप्तामपि तांतस्मै कन्यांदद्यात्‌यथाविधि॥

† वर्षैरेकगुणांभार्यामुद्वहे त्रिगुणस्वयं॥

‡ अष्टवर्षाभवेद्गौरी नववर्षातुरोहिणी।
दशवर्षाभवेत्कन्या अतऊर्ध्वंरजस्वला॥
प्राप्तेतुद्वादशेवर्षे यःकन्यांनप्रयच्छति।
त्रयस्तेनरकंयांति दृष्ट्वा कन्यांरजस्वलां॥

* * *

" He who does not give away a girl when she has attained her 12th year, and sees her in puberty goes to Hell."

* (9.) Yama, Page 562, Verse 22, says the same.

†(10.) In Vridhagoutama, Chapter 4, Page 515, the following occurs :—

" Virgins are good for Brahma marriage, as an unused girl is the purest."

(11.) In Colebrook's Digest of Hindu Law, Vol. II, Page 112, it is said:

" The proper time for disposing of a damsel in wedlock precedes puberty."

(12.) Vasishta, Chapter 8, Page 471, defines her as **अस्पृष्टमैथुनां** " Having not had sexual intercourse."

‡ (13.) The same Rishi in Chapter 17, Page 489, adds

" Give a girl in marriage who is a virgin and is not less than 10 years old."

§ (14.) Yagnavalkya says in Verse 52, Chapter 1, Page 414 that " one shall marry a woman who is a virgin."

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* प्राप्ते द्वादशमे वर्षे यः कन्यां न प्रयच्छति ।
मासि मासि रजस्तस्याः पिता पिबति शोणितं ॥

† श्रीभगवानुवाच—कन्याचाक्षतयोनि स्यात् कुलीना पितृमातृतः । ब्राह्मादिषु विवाहेषु परिणीता यथाविधि ॥ सा प्रशस्ता वरारोहा शुद्धयोनिः प्रशस्यते ॥

‡ प्रयच्छेन्नग्निकां कन्यां ऋतुकालभया त्पिता ।
अविप्लुत ब्रह्मचर्यो लक्षण्यां स्त्रियमुद्वहेत् ॥

§ अनन्यपूर्विकां * * *

(15.) * Gautamasamhita, Chap. 18, Page 423, says—

" He is a sinner who does not give a girl away before puberty."

(16.) † Samvarta says, pages 589 and 590.

A damsel aged 8 years is called a Gowry, 9 years, a Rohini, 10 years, a Canya, and more than that, a Rajaswala.

Father, mother, and elder brother contract sin when they see an unmarried daughter menstruated.

Therefore marry a damsel before she attains menstruation. (8 years appears to be the best age to marry)

(17.) ‡ Menu, Chapter 9, Verses 90, 91, says—

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* गौतमसंहिता अ १८ पत्र ४२३.

प्रागृतोरप्रयच्छन्दोषी

संवर्त प ५८९. ५९०.

† अष्टवर्षा भवेद्गौरी नववर्षा तु रोहिणी ।
दशवर्षा भवेत्कन्या अतऊर्ध्वं रजस्वला ॥६६॥
माताचैव पिताचैव ज्येष्ठोभ्राता तथैवच ।
त्रयस्ते नरकंयांति दृष्ट्वा कन्यांरजस्वलां ॥६७॥
तस्माद्विवाहयेत् कन्यां यावन्नर्तुमती भवेत् ।
(विवाहोऽष्टमवर्षायाः कन्यायास्तुप्रशस्यते)

‡ मनुः अ ९ श्लो ९० ९१.

आ प त्ध मैं.

त्रीणि वर्षाण्युदीचेत कुमार्यृतुमती सती ॥
ऊर्ध्वं तु कालादेतस्मात् विंदेत सदृशंपतिं ॥
अदीयमाना भर्तार मधिगच्छेद्यदि स्वयं ॥
नैनः किंचिदवाप्नोति न च यं साधिगच्छति

"Three years let a damsel wait though she be marriageable, but after that term, let her choose for herself a bridegroom of equal rank." 90. "If, not being given in marriage, she choose her bridegroom, neither she nor the youth chosen commits any offence."

(18.) * Vishnu, in Page 110, Chapter 24, says—

"After 3 years of puberty a girl may give herself away; for, she then becomes master of herself; she who attains puberty unmarried is called a Vrishallee; running away with her is no sin."

(19.)† Yagnyavalkya in Verse 4, Chapter 1, Page 415 says—

"He who does not give away a damsel contracts sin at her each menstruation. If there be none to give her away, she should give herself away."

(20.) ‡ Goutama says, Page 423,

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* विष्णुः अ २४ प ११०.

ऋतुत्रयमुपास्यैव कन्या कुर्यात् स्वयंवरं।
ऋतुत्रये व्यतीते तु प्रभवत्यात्मनः सदा॥
पितृवेश्मनि याकन्या रजः पश्यत्यसंस्कृता।
सा कन्या वृषली ज्ञेया हरंस्तां न विदुष्यति॥

† याज्ञवल्क्यः अ १ प ४१५ श्लो ४.

अप्रयच्छन् समाप्नोति भ्रूणहत्या मृतावृतौ
गम्यन्त्वभावे दातॄणां कन्या कुर्यात्स्वयंवरं ॥३४॥

‡ गौतमः प ४२३.

त्रीन्कुमार्य्यृतूनतीत्यस्वयंयुंजेत.

" A maiden shall allow three monthly periods to pass and afterwards unite herself."

(21.) Brahat Parasara, Vyasa, and Vashista lay down the same rule, *vide* pages 119, 325 and 489.

XIII. As for males, it has been laid down that 30 or 24 years form the best time for marriage, or earlier if necessary; but he must be a Yoova or one capable of procreation at the time of marriage.

*Brahat Parasara in Chapter 4, Page 117, says—

" Giving of a bride adorned to a bridegroom of good caste, capable of procreation, is Brahma marriage."

Whether he is not impotent must be tested in the manner *prescribed.*

Aswalayana (1-18-2) says, " षोडशेवर्षे " in his 16th year, Samavartanam, the giving up of the state of Bramacharry, may take place.

Marriageable years and ages of discretion are the same.

XIV. Thus it will be seen that the marriageable ages are not under or below those of discretion according to the Hindu Law. The bride should therefore be not less than 10 years old, and the bridegroom, not less than 15 years old, at the time of their marriage. It is equally clear that a female should be married before she actually attains puberty.

Ceremonies of marriage.

XV. What ceremonies constitute marriage, and what particular ceremony severs the girl from the Gotra and Pinda of her parents will be now explained. They are (1) gift (2) acceptance of the bride, and (3) suptapady.

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* बृहत्पराशर: अ ४ प ११७.

जात्यादिगुणयुक्ताय पुंस्त्वे सति वराय च ।
कन्यालङ्कृत्य दीयेत विवाहो वेधस: स्मृत: ॥
रेतो मज्जति यस्यास्तु मूत्रंच ह्रादिफेऽनिलं ।
पुमान्स्यात् लक्षणैरेतै विंपरीतैस्तु षंडक: ॥

XVI. A girl is declared to be given away in marriage, the moment the giver makes up his mind to give her away in marriage to a particular person, or he says that he will do so, or he gives her away in the presence of the sacred fire. After any of these events, the givers as a rule, lose their right to give her away to any other bridegroom. After the performance of the ceremony called Suptapady, a solemn contract entered into by the pair between themselves, the givers completely lose their aforesaid right. It is this ceremony that transfers the bride from the Gotra and Pinda of her parents to those of her husband.

Giving away a bride is of 3 sorts according to Bodhayana.

Suptapady concludes marriage.

XVII. These ceremonies constitute verbal troth, and fall short of consummation, that is, sexual intercourse. They are called marriage sumscara being one of the 16 ceremonies prescribed.

It will thus be seen that the Vivaha Samskara or the verbal troth consists of two parts, viz. (1) the gift of the girl by her guardian and the promise of the bridegroom to receive her, (2) the solemn engagement between the bride and the bridegroom to be husband and wife. This engagement is ratified by what is called Sapthapady by which the girl is transferred to the gótrā of the bridegroom and goes out as a rule of the custody of her guardian.

Saptapady concludes marriage.

XVIII. Now as regards the giving away of a bride, the Hindu Law sanctions the gift only once, as a rule.

"Once a girl is given away," Says Menu, verses 47 and 71, chap. 9.

Vishnu Smriti, chap. 5, page 83, says:—"Having been given away to one, she should not be given away to another. Having been given away to one, if she is given away again to another, the giver shall be punished."

A bride can be given away only once.

It is stated in Agni Puran, chap. 154, verse 3;—" Once should a girl be given away. He who carries away such a girl is a thief and is punishable."

Exceptions or giving away a bride more than once.

XIX. Exceptions to this rule exist, and in the following cases a girl can be given away by her guardians more than once and to another person.

(1.) If a husband who had paid shoolka or a price died, the widowed bride shall be given to his brother if she consents; Menu, chap. 9, verse 97.

(2.) * Srenandana in his commentary of this verse says that if she does not consent, she may be given away to some other person.

(3.) If the husband die after a damsel has been given to him with water poured on his hands and troth verbally plighted, but before she has been contracted to him by holy texts, that virgin belongs to her father alone; she may be given away to another with holy rites. Vasista Samhita, chap. 17, page 489. †

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* श्रीनंदनः अनुमत्यभावेअन्यस्मैदेया सकृत्कन्याप्रदीयते इत्यस्य अयमपवादः

† वशिष्ठसंहिता अ १७ प ४८९.

अद्भिर्वाचाचदत्तायां म्रियेताथोवरोयदि
नचमंत्रोपनीतास्यात् कुमारीपितुरेवसा
यावच्चेदाहृताकन्या मंत्रैर्यदि नसंस्कृता
अन्यस्मैविधिवद्देया यथाकन्या तथैवसा

(4.) *In Agni Puran, chap. 154, verses 5 and 6, it is laid down that should the husband be lost, dead, become anchorite, be impotent, or outcaste, in any of these five calamities, there shall be a second husband. In case of death, she should be given away to his brother, in default of him to any other.

(5.) †Kaṭtyayana says : If the bride be married to another casteman, to an outcaste, to the impotent ; to the wicked, to sagotra, to a slave, or to one chronic-diseased, she shall be given away to another with jewels, &c. though married to the former.

(6.) ‡ Shātātapa lays down :—

Should the bridegroom turn out to be not of proper family and conduct, he should be deprived of her even with force provided she is अक्षतयोनिः unused, and she should be given away to a proper match despite the rites performed ; and this breach is not sinful.

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* अग्निपुराणं अ १५४ श्लो ५ ६.

नष्टेमृतेप्रव्रजितेक्लीबे चपतितेपतौ

पंचस्वापत्सुनारीणां पतिरन्योविधीयते

मृतेतुदेवरेदेयात्तदभावे यथेच्छया

† कात्यायनः - सतुयद्यन्यजातीयः पतितःक्लीबएवच।

विकर्मस्थःसगोत्रोवादासोदीर्घामयोपिवा ।

ऊढापिदेयासान्यस्मै सप्रावरणभूषणा ॥

‡ शातातपः - वरश्चेत्कुलशीलाभ्यां नयुज्येतकदाचन ।

नमंत्राःकारणंतत्र नचकन्यानृतंभवेत् ॥

समाच्छिद्यतुतांकन्यां बलादक्षतयोनिकां ।

पुनःगुणवतेदद्यात् इतिशातातपोब्रवीत् ॥

(7.) *Another law-giver Vishnu says in chap. 5, page 83, "Without fault on the part of the Bridegroom, if a bride once given away be given away to another, the giver shall be punished as a thief."

A fair inference from this can be drawn that if the second giving away of the bride be in consequence of desertion or death of the bridegroom, it shall not be punished, it being legal.

(8.) † In Dharmasindu, Part I, P. 3, page 59, the author admits that out of the seven second marriages, in three, a girl may be once more given away.

"Before Suptapady in the case of the first three, that is, a girl given away in mind, by verbal troth, or in the presence of the sacred fire, if there be a necessity, there shall be another marriage; but after Suptapady, even if the marriage had been by force, she should not be given away to another."

‡ In page 75 the same author says :—

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* विष्णुः अ ५ प ८३.

यःकन्यांपूर्वदत्तां अन्यस्मैदद्यात् सचौरवच्छास्यः वरदोषंविना

† धर्मसिंधु सप्तपदीविधेःपूर्वमाद्यानांतिसृणां (मनोदत्ता, वाचादत्ता, अग्निंपरिगतानां) संकटेन्येनविवाहोभवति॥ सप्तपदीविधौ जातेबलाद्विवाहितापिनान्यस्मैदेया॥

‡ ब्राम्हादिष्वपि कन्यादानोत्तरमपि सप्तपदीविधेः पूर्वं वरस्यषंटत्वादिदोषज्ञाने, वरमृतौवाकन्याअन्यस्मै देया ॥

वाग्दानोत्तरंवरस्य देशांतरगमनेषण्मासंप्रतीक्ष्य अन्यस्मैदेया ॥

"Also in the Brahma marriage, even after the gift of the girl but before Suptapady, if the husband is found to be impotent &c., the bride shall be given away to another."

"After verbal betrothal, if the bridegroom goes away, the bride shall be given to another after waiting for him for six months."

Authorities for Suptapady concluding a marriage.

XX. It has been already said that Suptapady concludes marriage; a few authorities will now be quoted in support of this view.

(1.) In Colebrook's Digest of the Hindu Law, Vol. II. Section 174, Vasista is said to have ruled;—

"If a husband die after a damsel has been given to him with water poured on his hands, and troth verbally plighted, but *before* she has been contracted to him by holy *texts*, that virgin belongs to her father alone."

(2.) Do. do. Section 175, Yama says;—

"Neither by water poured on his hands nor by verbal promise is a man acknowledged as husband of a damsel; the marital contract is complete after the ceremony of joining hands on the seventh step."

(3.) * Parasara Dharmasastra, Chapter 3, verses 27 and 28 lays down;—

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* पराशरधर्मशास्त्रे ३ अध्याये - श्लो २७ - २८.

नोदकेननवावाचा कन्यायाः पतिरुच्यते ।
पाणिग्रहणसंस्कारात् नियतंपतिलक्षणं ।
पाणिग्रहणमात्राणां दाराद्यारक्षणेषुच ।
तेषांनिष्ठातुविज्ञेया विद्वद्भिस्सप्तमेपदे ॥

"None becomes a husband by water or word; one becomes a husband after the joining of the hands on the seventh step."

(4.) * In Likhitasamhita, page 377, it is laid down;—

" After Suptapady, a girl is discharged from her father's Gotra and becomes one with her husband in Pinda, Gotra and Sootaka."

(5.) Colebrook's Digest, Vol. II, page 173, Section 169, Menu says:

" The nuptial texts are a certain rule in regard to wedlock and the bridal contract is known by the learned to be complete on the seventh step."

XXI. Thus it will be seen that a girl in certain circumstances can be given away by her guardians to another bridegroom after the first husband is dead, or become useless for procreation, provided Suptapady has not been performed.

Only one marriage and a chaste widow is a Sādwee.

XXII. It is also a rule of the Hindu Law that a girl shall be married once only and to only one person, and that, should the female so married lose the use of her husband by whatever cause, she may remain faithful to him up to her death. Such women are styled Sādwees. Vide the following authorities:

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* लिखितसंहितायां प. ३७७.

एकत्वंसागताभर्तुः पिंडेगोत्रेचसूतके ।

स्वगोत्राद्भ्रश्यतेनारी उद्वाहात्सप्तमेपदे

*Menu Chap. 5, v. 156 and 162. If a Sādwee wife, whether her husband is alive or dead, wishes to obtain a Paty-Loca, she should do nothing which is not pleasing to him. No second husband is prescribed for the Sādwees.

She, who does not transgress her husband, obtains Bahrtru Loca, and is called by good people a Sādwee.

† Vishnu, Chapter 25, p. 110.

"After the death of her husband, if a Sādwee woman leads the life of an anchorite, she obtains heaven, though childless, like Brahmacharies."

‡ Yagnavalkya, p. 416, v. 75.

"After the death of the husband or during his life-time, if the wife refrains from joining others, she becomes famous here and enjoys bliss with Ooma."

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* मनुः अ - ५ - स्नो - १५६-१६२.

पाणिग्राहस्यसाध्वीस्त्री जीवतोवामृतस्यवा

पतिलोकमभीप्संती नाचरेत्किंचिदप्रियं

नद्वितीयश्चसाध्वीनां क्वचिद्भर्तोपदिश्यते.

मनुः - अ ९ - स्नो - २९.

पतिंयानाभिचरति मनोवाक्देहसंयता

साभर्तृलोकानाप्नोतिसद्भिः साध्वीतिचोच्यते.

† विष्णु :- अ २५ - प ११०.

मृतेभर्तरिसाध्वीस्त्री ब्रह्मचर्येव्यवस्थिता.

स्वर्गंगच्छत्यपुत्रापि यथातेब्रह्मचारिणः

‡ याज्ञवल्क्यः - प - ४१६ - स्नो ७५.

मृतेजीवतिवापत्यौ यानान्यमुपगच्छति

सेहकीर्तिमवाप्नोति मोदतेचोमयासह.

* Parasarasamhita, Chapter 4, p. 15.

"After the death of the husband, if the widow leads a chaste life, she obtains swargam, as Sud-Brahmacharies get."

† Parasara Dharmasastra, Chapter 3, verse 32.

"A widow leading a chaste life obtains swarga, though sonless."

XXIII. From what has been quoted above, it is, I hope, evident that

(1.) Marriage is optional.

(2.) The pair should consent to be married.

(3.) At the time of marriage they must be of age.

(4.) A male attains majority on his 16th year.

(5.) A female becomes a major when she attains her puberty or her 11th year.

(6.) A male's marriageable age is not less than his 16th year.

(7.) A female's marriageable age is not less than her 11th year.

(8.) Guardians shall give the bride away in marriage before she is menstruated.

(9.) If they fail to give her away, the bride may give herself to a bridegroom, three years after she is menstruated.

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* पराशरसं - अ ४ - प - १५.

मृतेभर्तरियानारी ब्रह्मचर्येव्यवस्थिता

सामृतालभतेस्वर्गं यथासद्ब्रह्मचारिणः.

† पराशरधर्मशास्त्रे अ - ३ - श्लो - ३२.

विधवाजायतेनारी ब्रह्मचर्येव्यवस्थिता

साम्हतालभतेस्वर्गं निर्दोषापुत्रवर्जिता

(10.) The giving her away may be by making up one's mind, or by word of mouth, or by solemn declaration before the sacred fire.

(11.) The acceptance by bridegroom is completed with the Suptapady.

(12.) A rule of the Hindu Law is that once only shall a bride be given away.

(13.) There are exceptions to this rule.

(14.) And there is only one marriage to a woman and she, who shall continue to be attached to the bridegroom to whom she is thus given away till *her* death, shall be called a Sādwee.

XXIV. The next point that requires elucidation is whether the same law allows any exception to the rule last mentioned.

Exceptions, or there are more than one marriageforfemales in certain calamities.

XXV. I hold that it does.

(1.) Menu, the first and principal Law-giver of the Hindus, begins Chapter 9 of his Institutes by stating that he will propound the duties of men and women, having already laid down in Chapter 3, verse 5, that a girl who has not had sexual intercourse is alone fit to be married. These duties are described as शाश्वतान् "fixed" or perpetual; after laying down rules of conduct towards women, and expatiating upon the happiness resulting from the virtuous life of a pair, he defines what a sādwee, or faithful wife is. He

then draws a picture of an unchaste wife; after some discussion about seed and soil, he says in verse 46,* "Neither by sale nor by desertion can a wife be released from her husband," meaning that her wifeship is perpetual despite any adverse circumstances. He then rules that once is a girl given away in marriage (verse 47.)

These aforesaid verses clearly show that Menu meant to lay down as a general rule that the marriage contract is binding upon the wife under all circumstances to her death; that she who keeps up the contract thus is a Sādwee or chaste women, and that a girl can be given away in marriage only once. Then he proceeds to propound the law concerning women in आपत्, that is, misfortune or calamity. Vide verse 56. This calamity has been defined by Cullooka to be want of progeny. In verse 59, is mentioned what a woman should do when she desires an offspring. This procedure is called Neeyoga. In verses 59 and 60, the rule for Neeyoga in the case of a ~~widow~~ is given.

woman देवराद्वासपिंडाद्वास्त्रियासम्यङ्नियुक्तया
प्रजेप्सिताधिगंतव्यासंतानस्यपरिक्षये ५९
विधवायांनियुक्तस्तु घृताक्तोवाग्यतोनिशि
एकमुत्पादयेत्पुत्रं नद्वितीयंकथंचन ६०

After laying down what the law of Neeyoga was, it is then condemned as barbarous. Vide verse 65 Chap. 9.

नोद्वाहिकेषुमंत्रेषु नियोगःकीर्त्यतेक्वचित्
नविवाहविधावुक्तं विधवावेदनंपुनः ६५

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* ननिष्क्रय विसर्गाभ्यां भर्तुर्भार्याविमुच्यते

In no marriage text is a Neeyoga mentioned; in no marriage law is Neeyoga upon a widow named.

Another case of आपत् or calamity is referred to in verse 69, *viz.*, the death of the husband after marriage has been concluded by words, that is, before sexual intercourse.

यस्याम्रियेतकन्याया वाचासत्ये कृतेपतिः

तामनेनविधानेन निजोविंदेतदेवरः ६९

He then recapitulates in verse 71 what he has said concerning the gift of a girl, *viz.*, that she should once be given to one person and that the giver of her again is guilty of a sin, that is, that a marriage contract is binding to death. Then he proceeds to show the exception to this rule.

"72. Even though a man may have married a girl in legal form, yet he may abandon her if he find her blemished or afflicted with disease or previously deflowered or given him with fraud.

73. If any man give a faulty damsel in marriage without disclosing her blemish the husband may annul that act of her ill-wedded marriage."

Having shown, for what fault either on the part of the bride or of her giver the marital contract can be cancelled, the author proceeds to propound the law showing when a marriage can be annulled for faults on the part of the bridegroom. In verses 74 and 75 he lays down that a husband shall provide maintenance to his wife during his absence abroad, and that in cases in which the husband has not so done the wife shall continue chaste during his absence. And in section 76 he limits the period during which she should behave as aforesaid.

प्रोषितो धर्मकार्यार्थं प्रतीक्ष्योष्टौनरःसमाः ॥
विद्यार्थं षड्यशोर्थं वा कामार्थंत्रींस्तुवत्सरान्॥७६॥

In commenting upon this verse, Sri-Nandana says that after the period mentioned in this verse, the wife may marry a second husband, and that this provision of the law does not contradict the rule laid down for the conduct of widows during their widowhood, for, those rules refer to such as wish for a particular bliss, and not to others.

श्रीनंदनः॥ ऊर्ध्वं भर्त्रंतरपरिग्रहे नदोषोस्तीत्यभिप्रायः॥ यत्तुमृतभर्तृकाणांब्रह्मचर्यवचनात् फलातिशयकामानां नान्यासां इत्यविरोधः॥

In verses 77 and 78, rules are given for punishing bad wives. In verse 79 it is ruled that a wife deserting her mad or impotent husband should not be punished. The author then proceeds to show for what faults of a wife she may be superseded. He then refers to another case of आपत् *viz.*, when there is a fear of being unable to secure a suitable match in time, a girl may be given away in marriage though before time to a good bridegroom, verse 89. He then says that there is no आपत् which would necessitate the giving away of a girl to one void of excellent qualities; let her even die as a virgin rather than be the wife of a गुणहीनः worthless man.

काममामरणात्तिष्ठेत् गृहेकन्यर्तुमत्यपि
नचैवैनां प्रयच्छेत्तु गुणहीनाय कर्हिचित् ८९

Another आपत् calamity is then noticed, *viz.*, the guardians failing to give her in marriage; and the rule in this

case of आपत् calamity is laid down to be to give herself away to a proper husband, and the time when this remedy may be availed of is fixed at 3 years after menstruation; such a marriage is then declared to be good in every way, verses 90-93.

After stating the proper ages of a pair for marriage, the lawgiver provides for another आपत्, calamity that is, a necessity arising from Dhurma or religion for earlier marriage, verses 94, 95, 96.

Another आपत् calamity viz., death of the husband who may have paid a shoolka, or purchase money, is met by the rule that his brother should have preference in marrying the widow if she consent, verse 97.

Srinandana in his commentary on this verse says अनुमत्यभावे अन्यस्मैदेया - सकृत्कन्याप्रदीयते इत्यस्य अयमपवाद:

"If the widow does not consent, she may be given away to any other. This provision is an exception to the rule that a girl shall be given away only once."

The Lawgiver concludes his ordinations in times of calamities, by saying that अन्योन्यस्याव्यभीचारो भवेदामरणांतिक: they should be true to each other up to death and that during each other's life they should not be disunited.

This appears to mean that the marital contract is binding on each of the contracting parties so long as each lives.

XXVI. I believe that it is clear from what has been said above that Menu considered a second gift or a second marriage in certain cases of आपत् calamity is legal, and

cases resolve themselves into two divisions, viz., on the occasion of the death and desertion by, the husband.

One of the ancient commentators, Madhava, a sympathizer with the school who hold that there should not be more than one marriage to a female, quotes the following verse as a part of Menu's institutes.

नष्टेमृतेप्रव्रजिते क्लीबेचपतितेपतौ
पंचस्वापत्सुनारीणां पतिरन्योविधीयते.

" In case the husband is lost, dead, become an anchorite, found impotent, or an outcaste, in any of these five calamities, females may have another husband."

XXVII. These five calamities resolve themselves into two classes, viz.; when finally separated from the husband and when he is dead.

In giving the definition of a son born of a twice married woman, Menu refers to these two classes of more than once married women.

मनु - अ - ९ श्लो १७५ १७६

यापत्यावापरित्यक्ता विधवावास्वयेच्छया
उत्पादयेत्पुनर्भूत्वा सपौनर्भवउच्यते १७५
साचेदक्षत योनिःस्यात् गतप्रत्यागतापिवा
पौनर्भवेन भर्त्रासा पुनः संस्कारमर्हति १७६

Menu chap. 9 verses 175, 176.

" He whom a woman, either forsaken by her lord or a widow, conceived by a second husband, whom she took by her own desire, is called the son of a woman twice married.

If the Poonarbhu be a virgin, though she be going to and returning from various parties, she is entitled to marriage ceremonies with her second husband."

In verse 167 of the same chapter the same classes of calamities are referred to by Menu.

He is called a Chetraja son, who is born of the bed, that is the wife, of a person who is dead, or impotent or diseased, by one who has been lawfully appointed to procreate.

यस्तल्पजः प्रमीतस्यक्लीबस्यव्यधितस्यवा

स्वधर्मेणनियुक्तायांसपुत्रः क्षेत्रजःस्मृतः

Thus it will be seen that Menu contemplated plurality of marriages to women under certain peculiar circumstances.

(2.) In Colebrooke's digest already referred to, Vol. II. Section 151 Davala is quoted to have laid down "A husband may be forsaken by his wife, if he be an abandoned sinner, or a mendicant, or impotent, or degraded, or afflicted with Phthisis, or if he have been absent in a foreign country.

Section 152, Whether such a husband be alive or dead, his wife may take another lord, for the sake of obtaining progeny, not through female independence.

Section 153, Eight years let a woman of the sacerdotal class wait for her absent lord; or four years, if she have borne no children; after these periods she may unite herself to another man.

* * * *

(4.) These periods are declared for the wives of absent men, if there be no intelligence; but if it be heard that the husband is living, these periods must be doubled.

(5.) * * * Hence if such woman marry another, it is no offence."

The Parasara Dhurma shastra is reputed as the authority for this Kaliyoog. Parasara himself says in page 3, chap. I. "In Krita yoog, the ordinations of Menu, in Treta, those of Goutana; in Dwapura, those of Shunka and Likhita; and in Kaliyoog, those of Parasara prevail."

कृतेतुमानवोधर्मः त्रेतायां गौतमः स्मृतः ।

द्वापरेशंखलिखितौकलौपाराशरस्मृतः ॥

In verses 1 and 2 chapter 2, he promises to lay down a Grahasta's (or a householder's) duties in Kaliyoog.

Madhava in his commentary on Parasara has in several places confessed that Parasara is the authority for Kaliyuga, vide page 218 of the Telugu Edition.

In verse 23, chapter 3, Parasara tells us what sorts of sons can legally be had in Kaliyoog; viz., Ourasa, Chetraja, Dattaka, and Kanycasoota; that is, one's own son, one lawfully born of another's wife, a given son, and a daughter's son.

औरसः क्षेत्रजः स्वैवदत्तकः कन्यकासुतः

He thus recognises one of the calamities आपत् described by Menu.

He then limits the number of calamities which appear to have been formerly very many, forming exceptions to the general laws of marriage.

In verse 31, he rules that if the husband be (1) lost, (2) dead, (3) or become an anchorite, (4) impotent, (5) or an outcaste, in any of these calamities another husband is prescribed for women.

गतेमृतेप्रव्रजितेक्लीबेचपतितेपतौ

पंचस्वापत्सुनारीणांपतिरन्योविधीयते

(4.) In Parasara Samhita, the same is laid down with some alterations.

अ - ४ - प १४.

औरसः क्षेत्रजः स्वैवदत्तः कृत्रिमकःसुतः

अ ४ - प १५.

नष्टेमृतेप्रव्रजितेक्लीवेचपतितेपतौ

पंचस्वापत्सुनारीणांपतिरन्योविधीयते

(5.) Vishnu, in chapter 15, page 93, places a Pounarbhava as the fourth in the list of sons, his superiors being (1) Ourasa, (2) Chetraja and (3) Putrika Putra; viz. (1) one's own son, (2) one lawfully born of another's wife and (3) a daughter's son. He declares a Pounarbhava as the heir in the absence of the first three in preference to even Dattaka.

In defining pollution, the same Rishi, in pages 103 and 104, says:—

स्त्रीणांविवाहः संस्कारः। संस्कृतासुस्त्रीषुनाशौचं भवति पितृपक्षे

* * * *

अनौरसेषुपुत्रेषुजातेषुचमृतेषुच परपूर्वासुभार्यासु प्रसूतासुमृतासुच

* * * *

एकरात्रेण

" For females, marriage is the only ceremony. In the case of women that have had the Samscara or marriage ceremony, there is no pollution for her on the side of her parent's family. The caseof the birth or death of अनौरसः unourasa sons, that is, of any class of sons from the second to the twelfth, or in the case of the confinement or death of a Parapoorva wife, that is, of a wife who had sexual intercôurse before the second marriage, there is pollution for one day."

From these quotations it will be evident that Vishnu who is supposed to be an incarnation of God, recognises a second marriage for females, lays down laws of inheritance, pollution in connection with it and rules that the samscara for females is marriage and that it makes a vast change in their status.

(6.) Let us see what Yagnavalkya propounds on the subject of the remarriage of females. In verse 65, chap. I page 415 he rules.

सकृत्प्रदीयतेकन्याहरंस्तांचौरदंडभाक्
दत्तामपिहरेत्पूर्वा च्छ्रेयांश्चेद्वरआव्रजेत्

"Once is a girl given away; taking such a girl away is punishable like theft. But if a better husband is available she may be taken away from the first husband."

The word "better" in this verse is explained by one of the ancient commentators as referring to the fact of the first husband having become "Doshee" faulty. I think, this means when the bride is visited with one of the five calamities referred to by other Rishis.

Like Vishnu, Yagnavalkya places a son of the remarried above Dattaka, and declares him to be the heir to his father's estate in the absence of the heirs placed above him. He prescribes rules for pollution in the case of his death: see pages 452 and 470.

अक्षतायां क्षतायांवाजातः पौनर्भवस्तथा।
दद्यान्मातापितावाय सपुत्रोदत्तकोभवेत्।
पिंडदोंशहरश्चैषांपूर्वाभावेपरःपरः

The inference which should be drawn from these is therefore the same as is drawn above from the ordinations of Vishnu.

(8.) The same may be said of Shunkha, another Law giver, vide page 364.

(9.) Goutama in his sutras 15, 16, 17 chap. 18 prescribes that a wife shall wait for 6 years if her husband has disappeared. If he becomes an anchorite, she need not wait as he cannot return. If the husband be a Brahmin and has gone out to secure knowledge she must wait for 12 years. These provisions are similar to those given by Menu and fairly sanction remarriage of women subject to the limitations mentioned.

(10.) Vasista, in his Samhita, chap. 17, page 488, places a son of a remarried woman in the list of Dayadas and declares him to have been ruled to be one of those Bandhavas who protect (the Pitras) from great calamities.

एतेदायादाबांधवास्त्रातारोमहतोभयादित्याहुः

He, further on, refers to remarriages in the various stages of life of a woman and describes the rituals of such remarriages, He then tells us how long a wife should wait for her lost husband.

क्लीवोन्मत्तानां प्रेतपत्नी षण्मासं व्रतचारिण्यक्षारल वणं भुंजानाः शयीत उर्ध्वं षड्भ्योमासेभ्यः स्नात्वा श्राद्धं चपत्येदत्वा विद्याकर्मगुरुयोनिसंबंधान् सन्निपात्य पिता भ्रातावानियोगंकारयेत् तपसेवोन्मत्तां अवशां व्याधितांवा नियुंज्यात् ज्यायसीमपिषोडशवर्षांनचेदामयाविनीस्यात् प्राजापत्येमुहूर्ते पाणिग्रहण वदुपचारोन्यत्र संस्थाप्य वाक् पारुष्यात् दंडपारुष्यात् च ग्रासाछादन स्नानलेपनेषु प्राक् यामिनीस्यात् अनियुक्तायां उत्पन्नः उत्पादयितुः

पुत्रोभवतीत्याहुः स्वाचेन्नियोगिनो दृष्टा लोभान्नास्तिनि योगः प्रायश्चित्तंवापि उपनियुंज्यादित्येके * * * पाणिग्रहेमृतेबालाकेवलंमंत्रसंस्कृता॥ साचेदक्षतयोनिःस्यात् पुनस्संस्कारमर्हतिइति प्रोषितपत्नीपंचवर्षाप्रवसेत् यद्यका मायथाप्रेतस्य.

(11.) Narada lays down that a female though once married, is entitled to marry again, as if she were unmarried provided she is a virgin.

उद्वाहितापियाकन्यानचेत्संप्राप्तमैथुना
पुनस्संस्कारमर्हेत यथाकन्यातथैवसा

This is a very clear authority for remarriage in the case of a virgin. Narada rules further ;—There are five cases in which a woman may take another husband ; her husband having perished or died or gone abroad, or if he be impotent, or have lost his caste. 97 Chapter XII. A Brahmin woman shall wait for her absent lord for 8 years; for 4 years only, if she has not given birth to children. After this period she shall join another. 98. * * * If she learns that her husband is living, she shall wait for him for double the time mentioned above. 100. This is the law of Brama in the case of men committing laches. To associate in sexual intercourse with another in such cases is therefore no sin. 101.

नष्टेमृतेप्रव्रजितेक्लीबेचपतितेपतौ
पंचस्वापत्सुनारीणां पतिरन्योविधीयते ९७

अष्टौवर्षाण्यपेचेतब्राह्मणीप्रोषितंपतिं
अप्रसूतातुचत्वारि परतोन्यंसमाश्रयेत्

*   *   *   *

जीवतिश्रूयमाणतु स्यादेषद्विगुणोविधिः
अप्रवृत्तौतुभूतानां दृष्टिरेषांप्रजापतेः
अतोन्यगमनेस्त्रीणां एषदोषोनविद्यते

(12.) Rig Veda, Ashtaka 8, Mundala 10, Sookta 109 contains an anecdote of a woman once married, having been remarried to Brahaspate after having been purified.

Sayana says in his comments ;—

अत्रेतिहासमाचचते, जुहूरिति वाग्नामा साब्रह्मणो जायाच, बृहस्पतेर्वाचस्पतित्वात् बृहस्पतेर्जुहूर्नाम भार्या बभूव, कदाचिदस्याकिल्बिषमस्यादौर्भाग्यरूपेणासांचक्रे अतएव सएनां पर्यत्याचीत् अनंतरमादित्यादयोदेवामिथो विचायनामकिल्बिषां कृत्वापुनः बृहस्पतयेप्रादुरिति.

"Here comes an anecdote. There was a lady named Joohu, she had been married to a brahmin. She became the wife of Brahaspati. This sin was exhibited in her by some misfortune. He therefore deserted her. The Devas, after holding a counsel among themselves, rendered her sinless and restored her to Brahaspati.

This lady who was thus married a second time to Brahaspati, justifies her conduct thus.

पूर्वंयथासोमेननीतां सोमोददत् गंधर्वायेत्यादिक्रमेणनीतांजुहूंजुहूंयथालब्धवान् तद्वदिदानीमपि.

"Just as a woman is transferred from Soma to Gandharva, &c. so I have been obtained by Brahaspati."

(13) In Taiteraya Aranyaka, 6th Prapatica 1st Anoovaka, pages 651 and 652, a reference is made to a second marriage, and a widow who has determined to commit suttee on the pile of her deceased husband, is dissuaded from it and advised to remarry.

इयंनारी पतिलोकं वृणानानिपद्यत उपत्वामर्त्य प्रेतं विश्वंपुराणमनुपालयंती तस्यैप्रजां द्रविणंचेहधेहि उदीर्ष्वनार्यभिजीवलोकमितासुमेतमुपशेषएहि हस्तग्राभस्य दिधिषोस्त्वमेतपत्युर्जनित्वमभिसंबभूव सुवर्णहस्तादाददा नामृतस्यश्रियैब्रह्मणेतेजसेबलाय अत्रैवत्वमिहवयंसुशेवाविश्वास्पृधो अभिमातीर्जयेम.

Sayanacharya explains the above as follows.

हेमर्त्य मनुष्य या नारी मृतस्य तव भार्या सा पतिलोकं वृणाना कामयाना प्रेतं मृतंत्वां उप निपद्यते समीपे नितरां प्राप्नोति कीदृशी पुराणं विश्वं अनादिकाल प्रवृत्तं स्त्रीधर्मं अनुक्रमेण पालयंती पति व्रतानां स्त्रीणां पत्या सहैव वासः परमोधर्मः तस्यै धर्म पत्न्यै त्वं इहलोके निवासार्थं अनुज्ञांदत्वा प्रजां पूर्वं वि-

यमानां पुत्रादिकां द्रविणं धनंच धेहि संपादय अनुजानी हीत्यर्थः * * * हेनारि त्वं इतासुं गतप्राणंएतं पतिं उपशेषे उपेत्यशयनंकरोषि उदीर्ष्व अस्मात्पतिसमीपात् उत्तिष्ठ जीवलोकं अभि जीवंतं प्राणसमूहं अभिलक्ष्य एहिआगच्छ त्वं हस्तग्राभस्य पाणिग्राहवतः दिधिषोः पुनर्विवाहेच्छोः पत्युः एतत्जनित्वं जायात्वं अभिसंबभूव आभिमुख्येन सम्यक् प्राप्नुहि हेनारि त्वं श्रियै संपदर्थं ब्रह्मणे ब्राह्मणजात्यर्थं तेजसेकांत्यर्थं बलायशरीरबलार्थं मृतस्य पुरुषस्य हस्तात् सुवर्णं आददाना सती अत्रैवलोकेतिष्ठ वयमपि इहलोके सुशेवाः सुखं सेव मानाः संतः स्पृधः अस्माभिः सहस्पर्धमानाः विश्वाः अभिमातीः सर्वान् शत्रून् जयेम

"Following the old custom and wishing to obtain Patyloca, (an inferior Heaven) this woman has approached your dead body. Permit her to live in this world. Give her wealth and progeny. O woman, you are lying with your deceased husband; get up from near the corpse; look at this living world; come and become the wife of him who wishes to marry you; from the hand of the corpse, take the gold, that wealth, knowledge, light, and strength may attend

you; we with you in this world will enjoy happiness compete with each other, and conquer our enemies.

14. In the following text of the Atharvaveda, a clear reference is made to the remarriage of women. vide ix, 5, 27.

यापूर्वंपतिंविलाथान्यंविंदतेपरं। पंचौदनंचताावजंद

दातोनवियोषत:

J. Muir refers to this passage in page 458 of Vol. 5 of Sanskrit texts, and says that women appear to have been permitted to marry a second time.

15. Mr. J. D. Mayne, the well-known Jurist, makes the following observations on the subject, in his Hindu Law and Evidence.

"86. The prohibition against second marriages of women either after divorce, or upon widowhood, has no foundation either in early Hindoo Law or custom. Passages of the Vedas quoted by Dr. Mayr sanction the remarriage of widows. And the second marriage of women who have left their husbands for justifiable cause or who have been deserted by them, or whose husbands are dead, is expressly sanctioned by the early writers. Vide Narada xii, 97 to 101. See also Devala, 2, Digest 470; Boudhayana, 2, Section 20 Vashista, xvii, Section 13; Katyayana 3, Digest 236. The

authority of Menu is * strongly on the other side, but I think it is plain that this is one of the many instances in which the existing text has suffered from interpolations and omissions. Menu declares that a man may only marry a

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*Mr. Mayne quotes Manu, Chap VIII Section 226, V. Section, 161, 162, 163.

पणिग्राहणिकामंत्रा: कन्यास्वेवप्रतिष्ठिता:
नाकन्यासु क्वचिन्नृणां लुप्तधर्मक्रियाहिता: ॥२२८॥

"The holy nuptial texts are applied solely to virgins; and never to non-virgins, for, these are devoid of religious ceremonies."

This verse proves the assertion that non-virgins cannot be married with संस्कार. marriage ceremonies.

अपत्यलोभाद्यातु स्त्रीभर्तारं अतिवर्तते
सेहनिंदामवाप्नोतिपतिलोकाच्चहीयते ॥१६१॥

नान्योत्पन्नाप्रजास्तीह नचाप्यन्यपरिग्रहे
न द्वितीयश्चसाध्वीनां क्वचिद्भर्तोप दिश्यते ॥१६२॥

पतिं हित्वापकृष्टं स्वमुत्कृष्टं यानिषेवते
निंद्यैवसाभवेल्लोके परपूर्वेतिचोच्यते ॥१६३॥

"But that woman (not necessarily widow,) who, from a wish to bear children transgresses her husband (not necessarily deceased) comes under disgrace here below and shall be excluded from Putty loca, (an inferior heaven) 161.

Issue, begotten by any other than the husband or on other's wife, is no progeny; for no second husband (paramour) is allowed to a Sadwee (she who wishes to secure Pattyloca) 162.

She who deserts her husband who is inferior, and takes another who is superior, becomes degraded here and is called Parapoorva, used by another 163."

These verses refer to adultery or intercourse in order to obtain children, by women whose marriage has been consummated, or who wish to be sadwees. The words Parapoorva, Puteeloca, and Sadwee prove this. See also Cullooka.

Reading the aforesaid verses thus, the remark of Mr. Mayne that the authority of Menu is strongly on the other side is not correct.

virgin and that a widow may not marry again. The only exception which he appears to allow, is in the case of a girl whose husband has died before consummation who may be married again to the brother of the deceased bridegroom. On the other hand two other texts appear to recognise and sanction the second marriage, either of a widow or of a wife forsaken by her husband. * The contradiction appears to arise from the deliberate omission of part of the original text in an earlier portion of the same chapter. At IX, 76 a wife whose husband resides abroad, is directed to wait for him eight, six or three years according to the reason for his original absence. Nothing is said as to what is to happen at the end of the time. Kulluka Bhatta inserts a gloss:— "after these terms have expired, she must follow him"† Now if we look to the corresponding part of Narada, who had an earlier text of Menu before him, we find

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*Menu Chapter 9 Verses 175, and 176.

यापत्यावापरित्यक्ता विधवावास्वयेच्छया
उत्पादयेत्पुनर्भूत्वा सपौनर्भवउच्यते ॥१७८॥
साचेदक्षतयोनिःस्यात् गतप्रत्यागतापिवा
पौनर्भवेनभर्त्रासा पुनस्संस्कारमर्हति ॥१७८॥

The last half verse is read by Baudhayana as,

पौनर्भवेनविधिना पुनःसंस्कारमर्हति

I have already shown that there is no contradiction as feared by Mr. Mayne : see Sreenandana's Gloss in page 23.

Menu everywhere advocates marriage rites to virgins only.

†I have already (page 23) referred to another gloss, that of Sre Nandana whose commentary on Menu appears to have been older than that of Cullooka. His gloss that "after the period mentioned in this verse, the wife may marry a second husband," is in perfect accord with the Narada's version of Menu.

that he lays down that "there are five cases in which a woman may take another husband; her first husband having perished, or died naturally, or gone abroad, or if he be impotent, or have lost his caste." Then follow the periods during which a woman is to wait for her absent husband, and the whole thing is made into sense, by the direction, that when the time has expired she may betake herself to another man. Nothing is said about her following him, which after such an absence would probably be impossible or useless. If a similar passage had followed 76 in Menu, the texts at 175, 176 would be intelligible and consistent. When second marriages were no longer allowed, these passages seem to have been left out and others of an exactly opposite character were *inserted; the texts at 175, 176 then became unmeaning, but they were retained to explain the phrase "son of an unmarried woman," which had already appeared in the list of subsidiary sons. It is probable that the change of usage on this point arose from

*Mr. Mayne's inference that interpolations have been made in the text of Menu, is very probable. The verses 64 to 68 in Chapter 9 look very suspicious. I think they were no part of Menu's work. King Vena is mentioned in verse 66 and to him is attributed the custom of begetting sons by appointment. If Menu has said this he must have done so some time after the death of Vena, and Vena is the tenth king from Menu. Moreover if Vena had introduced an illegal custom, there was nothing to prevent Menu to have it so declared, and prohibited it and made it penal. He has done nothing of the kind but has included the progeny among the list of sons, retained and legalized it. And it has been treated as legal to the beginning of the present Caliyoog, and Parasara, the authority for this yoog enumerates this sort of son as the second of the 4 sons allowed in this yoog. These verses therfore appear to be interpolated or not of Menu.

In various works, the enormities committed by Vena are enumerated in full; but it is a remarkable fact that in these no mention is made of his having introduced the custom of getting sons by appointment. Vide pages 43 and 45 of the Prelimmary Discourse in "A Code of Gentoo. Laws, London, 1776.

the influence of Brahmanical opinion, marriage coming to be looked upon as a sort of sacrament, the effect of which was indelible. A similar cause has produced that difference of opinion on the legality of marriage following upon divorce which prevails in Protestant and Roman Catholic countries. If it is asked why the law varied in exactly the opposite direction in regard to the second marriages of men, the only answer I can suggest is, that men have always moulded the law of marriage so as to be most agreeable to themselves. * * *

88. Marriage is not to be confounded with betrothal. The one is a completed transaction ; the other is only a contract ; Menu says, " Neither ancients nor moderns who were good men have ever given a damsel in marriage after she had been promised to another man". But Narada and Yajnavalkya both admit the right of a father to annul a betrothal to one suitor, if a better match presents himself ; and either party to the contract is allowed to withdraw from it, where certain specified defects are discovered. Narada states that a man who withdraws from his contract without proper cause, may be compelled to marry the girl even against his will. But it is now settled by decision that a contract to marry will not be specifically enforced and that the only remedy is by an action for damages. All expenses resulting from the abortive contract would be recoverable in such an action. Of course no such claim could be maintained where the contract failed from the wilful or negligent conduct of the complaining party. Probably the real difficulty has often been to distinguish between two things which are sometimes called by the same name, viz., the betrothal, which is only a promise to marry, and the pledging of troth, which forms part of the marriage itself. The former class of betrothal is often celebrated with much ceremony, but this does not alter its character. So

in the actual marriage there are numerous formalities, and many recitals of holy texts, but the operative part of the transaction consists in the seven steps taken by the bridal pair. On the completion of the last step, the actual marriage has taken place. Till then it is imperfect and revocable. Even this proceeding, however, is not absolutely essential. It is a form which, if complied with, is conclusive. But if it is shown that by the custom of the caste or the district, any other form is considered as constituting a marriage, then the adoption of that form, with the intention of thereby completing the marriage union, is sufficient. In some communities there is a custom that after the actual marriage has taken place, a further ceremony must be performed before cohabitation, and if the man who has gone through the first ceremony declines to perform the second, the girl may lawfully marry again. But the legal result of such a custom would appear to be that there is no binding, and complete marriage until after the second ceremony."

It is clear from this that no marriage is complete till cohabitation commencs.

XXVIII. From the authorities quoted above, it is evident that the Vedas, Smritis and Puranas do allow and sanction remarriages of females. These remarried females are called Poonarbhoos, and their children, Pounarbhavas.

XXIX. I will now summarize the views of the Rishis on the subject of remarriage of women.

(1) A Poonarbhoo is a female who has been married to another after having been given away to one (1) mentally, (2), verbally (3), or in the presence of Sacred fire; (4) or after the completion of the Saptapady ceremony; (5) or after the consummation of marriage with the first husband; (6) or after her conception; (7) or after she bore children. Such a married pair and their

children are by Cassyapa declared to be fallen and sinful; as sinful as a barren women, a thief, an impotent man, a liver upon interest on money, a foul mouthed man, a fighter with his father, a swell, a manufacturer of arms, a gambler, a tale bearer, a perpetual beggar, &c., (Vide Menu, chapter 3)

Cattyayana is said to have ruled that in the case of the married, remarriages are legal.

From the Section 180, page 177, vol. 2 of the Digest of Hindu Law, by Colebrooke, it is clear that the girl belongs to him who consummates nuptials.

Menu condemns a Pounarbhava, Verse 155. chap. 3, but legalizes marriage in the case of the first four Poonarbhoos. Vide verses 160, 175and 176 chap. 9, Menu.

Vishnu defines a Pounarbhava and a Poonarbhoo, and declares a Pounarbhava to be an heir in the fourth degree, and does not condemn either a Poonarbhoo or a Pounarbhava, see Vishnu pages 93, 103 and 104.

Yagnavalkya defines a Poonarbhoo as one twice married whether in the virgin state or otherwise, and condemns a Pounarbhava; but legalizes the second marriage in the case of securing a better husband; see Yagnavalkya pages 415, 452 and 470.

Angirasa defines a Poonarbhoo as one given away a second time and condemns her, but he apparently prescribes a certain ceremony to remove the taint from her, page 560.

Parasara who sanctions second marriage in 5 cases of calamity does not define a Poonarbhoo or a Pounarbhava, nor does he condemn either of them; Vide Manuscript chap. 3; also pages 14 and 15.

Baudhyana, who is said to have been a follower of Parasara, rules that she, whose husband has been lost or

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killed, deserves marriage ceremony under the rules of remarriage, provided she is a virgin. See Baudhayana Smriti marriage section, page 28 of an old Cadjan copy.

These verses contain a good mauy clerical errors, which have been corrected. They are as follow ;—

In the Mauuscript :—

निसृष्टायांहृतेवापि यस्यैभर्ताम्रियेतस:

साचेदक्षतयोनिस्यात् गतप्रत्यागतासती

पौनर्भवेनविधिना पुन:संस्कारमर्हति

as corrected ;—

निसृष्टोवाहृतोवापि यस्याभर्ताम्रियेतवा

साचेदक्षतयोनि:स्यात् गतप्रत्यागतापिवा

पौनर्भवेनविधिनापुन: संस्कारमर्हति

Brahat Parasara define3 Poonarbhoos and divides them into 3 classes viz. (1) those twice given, (2) those who after deserting their lords and associating with others, rejoin their first lords, (3) those given to others than their brothers-in-law where they may exist. He then condemns them. But none of these condemned, fall under any of the classes whom this paper holds entitled to an unobjectionable second marriage. Vide page 179. 180.

अन्यदत्तातुयाकन्यापुनरन्यायदीयते अस्याअन्नंन भोक्तव्यंपुनर्भू:कीर्तिताहिसा कौमारंपतिमुत्सृज्ययात्वन्यं पुरुषंश्रिता पुन:पत्युर्गृहंगच्छेत्पुनर्भू:साद्वितीयका असत्सुदेवरेषुस्त्रीबांधवैर्याप्रदीयत। सवर्णायसपिंडायपुनर्भू: साहतीयका

Vasista defines a Poonarbhoo as one who after deserting her first husband when he is too young and after associating with another, rejoins her first husband; or as one who, being a widow or being the wife of an impotent, an outcaste, or a mad husband whom she has deserted, obtains another husband.

Vasista not only not condemns a Pounarbhava but calls him a Dayada, Bandhoo and Saviour from great perils. He ordains marriage ceremonies to a virgin when remarried; page 488.

The existing practice sanctions the remarriage of the first three Poonarbhoos.

In short, Vishnu, Brahat Parasara, Parasara, Apastamba and Vasista, do not condemn a Poonarbhoo, whose remarriage is advocated in these papers as legal.

Vishnu and Vasista declare a Pounarbhava to be a very near heir next to Ourasa.

Menu, Vishnu, and Cattyayana sanction marriage Samskara or ceremony to the virgin Poonarbhoos. Menu and Cattyayana condemn Poonarbhoos and Pounarbhavas. According to the plain laws of construction, these must be held to condemn other Poonarbhoos than those whose remarriage they have sanctioned.

Yagnavalkya, while condemning a Pounarbhava, legalizes a second marriage even in the case of a better husband offering his hand.

The following Extract from the Translator's Preface to the Code of Gentoo Laws page 67 dated previous to 1775, will show what the ancients thought on the virginity of a Bride.

"In Asia, the indubitable Virginity of the Bride has ever been a requisite and most necessary condition of a Marriage, and indeed the Warmth of constitution in either

sex, and the universal jealousy of the Men in those climates, give great propriety to the condition; for in Women the first breach of chastity was always esteemed decisive; and Moses codsidered the Offence in at least as serious a Light as the Gentoos have done, since he ordained, that, if the Tokens of Virginity were not found upon a girl at her Marriage, she should be stoned."

It is admitted on all hands and it is a notorious fact that the first three classes of Poonarbhoos may be and always have been allowed to remarry and to enjoy all the privileges of the only once married women; of these three classes, the third is the bride who has been given away by her guardian before the sacred fire. This gift is attended with great ceremonies. These are:—The guardian is asked by the bridegroom to give her as his wife; the donor then thrice permits the bridegroom so to ask for her hand; the donor then thrice duly declares that he will give her, the witnessing Brahmins then bless the parties to the contract by reciting several verses of the Vedas; then follow other customary ceremonies; the donor then feasts the Bridegroom; Verses of Rig Veda are then repeated, the names and gotras of the ancestors of the pair are loudly proclaimed: the Bridgroom is then asked to accept the Bride, he secretely repeats verses of Rig Veda after having solemnly thought of God, he then solemnly thrice declares that he will accept the Bride for the purposes of Dharma and progeny; the Brahmins then bless the Donor and the Donee with Rig Mantras and finally Mungala Sootram is tied to the neck of the Bride, a token which is acknowledged by all the orthodox. as the indelible symbol of the having become a wife. Even after the performance of these solemn ceremonies, it has been admitted by all the othodox that the bride may be given away to another bridegroom if the first bridegroom be dead.

XXX. The fair conclusion which can be drawn from the above appears to be that virgin Poonarbhoos, viz, the first four, can be married more than once with the rites of the first marriage. This law, it will be seen, is at one with common sense. In raising progeny the eastern nations were very anxious to keep the blood pure, and this object is fully secured by not allowing a non-virgin to marry again and rank with a virgin so married. Even for the first marriage the Rishis required only a virgin and condemn the progeny of her whose virginhood had been broken at the time of her marriage.

XXXI. If non-virgin women who have lost their husbands wish to enjoy rank in society, their only course is that prescribed for Sadwees, that is, that of leading the life of an anchorite and undergoing almost all the ceremonies of a male anchorite, viz, removing the hair from the head, and symbolical thread from the body, giving up luxuries, double cloth, and fine apparels, not eating more than once &c. and leading a chaste life.

XXXII. According to the Hindu Law therefore (1) A girl is marriageable either after she is given away by her guardians, or after she selects a husband for herself. (2) Guardians can give her away, as a rule, only once ; but if the party to whom she is given away by the guardian is found, before, and according to some authorities after, Saptapady, to be incompetent for the consummation of the marriage, the guardian can give her away to another person. (3) She can give herself away, if the guardians neglect to give her away up to three years after the attainment of her puberty. (4) She can give herself away also in cases in which her husband has died after the Saptapadee was performed and before the consummation of marriage. (5) The pairs thus married and their progeny are entitled to all the privileges of those belonging to the first married pair and their progeny.

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